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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-197

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The rule creates a new subchapter in ch. NR 200. Each of the two subchapters has its own definitions, and five of the definitions in s. NR 200.21 duplicate definitions in s. NR 200.02. The purpose of definitions is to avoid needless repetition. An additional subchapter for definitions that are common to the entire chapter should be created.

b. When a subchapter title is created, as in SECTION 2, it should be in the following form: “Subchapter I (title) of ch. NR 200 [precedes NR 200.01] is created to read:”. This provides the information necessary to create the subchapter title.

c. The definitions in s. NR 200.02 (3) and (4) are definitions of specific types of point source discharges. Accordingly, the defined terms should be “major municipal discharge” and “minor municipal discharge.”

d. In s. NR 200.02 (6), the notation “e.g.” should not be used. The word “including” could be used or examples of a biocide or water quality conditioner can be placed in a note to the rule.

e. References to addresses and departmental offices, as set forth in s. NR 200.07 (2), should be included in notes, rather than in the text of the rule. This allows for expedient updating of the rules when the department is reorganized.

f. The material stricken in the current rule should precede material inserted by the rule in s. NR 200.07 (4).

g. Section 227.116, Stats., requires permit action deadlines that include a requirement for a business to obtain a permit to specify the number of *business days* within which the department will review and make its determination. Do the amendments to s. NR 200.10 comply with this statutory requirement?

h. In s. NR 200.21, the introduction should be replaced by the phrase “In this subchapter:”.

i. “Department” should not be capitalized in s. NR 200.24 (2).

j. The entire rule should be reviewed to ensure that introductory material grammatically leads into following subunits and that the introductory material clearly indicates whether all of the requirements in the following subunits must be met or whether it is sufficient to meet only one of the requirements in the following subunits.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Specific cross-references should be used wherever possible. If appropriate, the definition of “municipal water system” in s. NR 811.02 (16) should be used as the cross-reference in s. NR 200.02 (7).

b. A definition should add something to the understanding of a term and should be used to achieve consistency in the terminology used in the rule. “Point source” is defined in the current rule in s. NR 200.02 (7). Defining “outfall” to mean a “point source” in s. NR 200.02 (8) merely provides that two different terms mean the same thing. The department should review the use of the term “outfall” in current s. NR 200.02 (9) and proposed s. NR 200.065 (1) (b). “Point source” should be substituted if these terms in fact mean the same thing.

c. Has the department complied with s. 227.14 (3), Stats., with respect to application forms referenced in s. NR 200.06 (4) and NR 200.065 (1) (intro.)?

d. The cross-references in s. NR 205.07 (1) (g) set forth a procedure for submitting applications. This procedure is referenced in ss. NR 200.07 (4) and 200.25 (intro.). It is not clear why the details of s. NR 205.07 (1) (g) must be set forth following the cross-reference.

e. The cross-references in ss. NR 200.20 and 200.21 (15) are inconsistent. The former refers to variances “allowed by” s. 283.15, Stats., which is an appropriate description of that statute. However, the latter refers to water quality standards “adopted under” s. 283.15, Stats., when in fact the water quality standards are adopted under s. 281.15, Stats. The department should consider whether the definition of “variance” is necessary. The only purpose of the definition appears to be to provide a reference to the statutory authority, which could be provided in a note after s. NR 200.22 (1).

f. The terms in s. NR 200.21 that define by reference provisions of ch. NR 149 each appear to be used only once in the rule, mostly in s. NR 200.24 (1) (f) 6. These references would be substantially more useful if the cross-references were included where the terms are used in the rule. The definition section then could be shortened by eliminating the definitions of terms used only once in the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The term “industrial facility or activity” is used in s. NR 200.02 (14). This term determines in part the regulatory scope of the rule. The department should consider whether it will be clear in all cases whether a particular facility is an industrial facility.

b. The term “surface waters,” as defined in s. NR 200.02 (15), is difficult to understand in relationship to the definition of “waters of the state” in the current rule. “Surface waters” are a subset of “waters of the state,” and the definition of “surface waters” could be substantially clarified by drafting it in that form, rather than repeating some, but not all, elements of the “waters of the state” definition.

c. In s. NR 200.065 (1), the introduction should conclude with a colon.

d. Is “results” an appropriate word choice in the heading of Table 1? Should any time frame be specified for the monitoring, particularly where multiple samples must be taken? Should any time frame be specified for the monitoring in s. NR 200.065 (1) (c) and (d)?

e. It is not clear what is meant by s. NR 200.065 (1) (g) 2. As drafted, the rule suggests that past monitoring is only acceptable if the results of that monitoring are similar to the results of monitoring the current discharge.

f. The term “discharge levels” is used in s. NR 200.065 (1) (h) 1. It is not clear whether this term refers to the volume of discharge, the concentration of contaminants in the discharge or some other element of the discharge. In sub. (1) (h) 2., to what time frame does the phrase “previous monitoring” apply?

g. In s. NR 200.07 (4) (a) to (e), it appears that the word “by” should be deleted in order to grammatically follow from the subsection’s introduction. Also, in par. (a), it appears that the word “of” should be replaced by the word “or.” [See also s. NR 200.25.]

h. In s. NR 200.22 (2) (e), it appears that the word “precludes” should be replaced by the word “preclude.”

i. Is s. NR 200.24 (1) (e) necessary, given the specific requirements of s. NR 200.24 (1) (n)?

j. It appears that the substantive provisions of s. NR 200.26 are more appropriately placed in s. NR 200.24.

k. For purposes of understanding the rule, a note should be added after s. NR 200.28 to describe the time deadlines in s. 283.15, Stats.